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MARRIAGE OF DISEASED PERSONS.

NEW JERSEY COURT DECIDES THAT CONCEALMENT OF TUBERCULOSIS IS CAUSE FOR ANNULING MARRIAGE.

The New Jersey Court of Chancery has decided ¹ that a marriage can be annulled where one of the parties concealed the fact that he had chronic tuberculosis.

In a suit by a wife for the annulment of her marriage it was shown that the husband had concealed the fact that he was suffering from chronic tuberculosis for fear that if he told her she would not marry him. The court held that the concealment was such fraud as would warrant the annulment of the marriage. In the opinion it was said:

* * * Defendant at the time of the marriage was, to his knowledge, suffering from chronic tuberculosis. His father had died of tuberculosis prior to the marriage. Defendant did not inform his wife of his condition. He concealed it because of a fear on his part that if he told her she would not marry him. The death of the father was falsely represented to the wife, prior to the marriage, as due to pneumonia. Petitioner did not discover that defendant was suffering from tuberculosis until November, 1916, and immediately upon the discovery ceased cohabitation. The medical testimony is to the effect that tuberculosis is an infectious, contagious disease, transmissible to offspring. If the disease itself is not transmitted, there is grave danger that offspring will be predisposed to the disease. * * *

The conduct of the defendant in the case at bar in concealing the fact that he was at the time of the marriage suffering from hereditary chronic tuberculosis was undoubtedly fraudulent. The question, then, is whether, under *Carris v. Carris*, to relieve against such fraud would be against good policy, sound morality, and the peculiar nature of the marriage relation. I am convinced to the contrary. * * * It is well known, aside now from the medical testimony in this case, that close contact with one suffering from tuberculosis involves great danger of transmission both through infection and contagion. It is almost impossible to conceive the ordinary relationship of husband and wife existing without that danger ever present. There is always also great danger of transmittal of the disease to offspring, and, as I have stated before, if the disease itself is not transmitted, there are likely to be transmitted characteristics which predispose toward the development of the disease. False representations with respect to its existence go then, I think, to an essential of the marriage relation. They are very different from representations with respect to health in general. They are more akin to representations of freedom from leprosy or diseases of similar nature.

I can not agree that the only diseases which affect an essential of the marriage relation are those of a venereal nature. I can see nothing whatever in good policy, sound morality, or the peculiar nature of the marriage relation which would warrant the court, after having found the fraud, denying relief. Neither good morals nor public policy are subserved by compelling parties to live together as man and wife, with the ever-present danger of infection, and beget offspring liable to be tuberculously inclined, nor are they subserved by compelling a woman who has married under a misrepresentation with respect to the fact to continue to be bound to a man affected with tuberculosis without having the close intimacy to which she is entitled. * * * The suppression by defendant of the fact that he was suffering from tuberculosis of the nature that he was, for the reason that he did suppress it, is equivalent in law to an express representation on his part that he was free from it. * * *

¹ *Davis v. Davis*, 106 Atl., 644.